

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESAIR, LLC; AND S AVIATION, LLC,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SALLY L. LOEHRER, DISTRICT  
JUDGE,

Respondents,

and

JAMES TYGRET,  
Real Party in Interest.

No. 50838

**FILED**

FEB 08 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss or for summary judgment in a personal injury matter. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. Specifically, petitioners assert that real party in interest's action below is barred by the Nevada Industrial Insurance Act's (NIIA's) exclusive remedy provisions.<sup>1</sup>

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,<sup>2</sup> or to control a manifest abuse or an arbitrary or capricious

<sup>1</sup>See NRS 616A.020; NRS 616B.612.

<sup>2</sup>NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

exercise of discretion.<sup>3</sup> The counterpart to a writ of mandamus, a writ of prohibition, is available when a district court acts without or in excess of its jurisdiction.<sup>4</sup> Whether to consider a petition for extraordinary writ relief is within our sole discretion,<sup>5</sup> and generally, we will not exercise our discretion to consider petitions that challenge district court orders denying motions to dismiss or for summary judgment, unless no factual dispute exists and summary judgment is clearly required by a statute or rule, or when an important issue of law requires clarification.<sup>6</sup>

Having considered this petition, the joinder thereto, and the supporting documentation, we are not satisfied that our intervention by way of extraordinary relief is warranted.<sup>7</sup> Accordingly, we

---

<sup>3</sup>Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>4</sup>State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

<sup>5</sup>See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

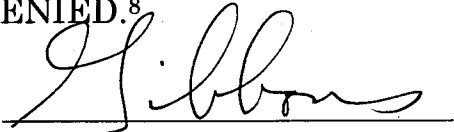
<sup>6</sup>Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

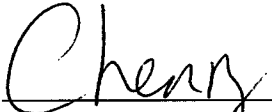
<sup>7</sup>See NRS 616B.636(1) (providing that the NIIA's exclusive remedy provisions do not apply to employers that fail "to provide and secure" workers' compensation). Although petitioners also contend that real party in interest should be estopped from arguing that NRS 616B.636(1) applies to this matter, determining whether equitable estoppel applies usually requires the resolution of factual issues, see Matter of Harrison Living Trust, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005), which the district court should address in the first instance, see Smith, 113 Nev. 1343, 950 P.2d 280; Round Hill Gen. Imp. Dist., 97 Nev. 601, 637 P.2d 534.


In addition, we note that the estoppel issue was raised in petitioner Wesair, LLC's reply below and this court was not provided with any response to Wesair's reply. Further, petitioner S Aviation, LLC, which

*continued on next page . . .*

ORDER the petition DENIED.<sup>8</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Sally L. Loehrer, District Judge  
Lewis Brisbois Bisgaard & Smith, LLP  
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas  
Campbell & Williams  
Eighth District Court Clerk

---

*... continued*

joined in Wesair's motion below and in this petition, has not explained whether or how it bears an employer-employee relationship to real party in interest. See NRAP 21(a) (explaining that petitioners must provide a factual statement sufficient to understand the issues presented and copies parts of the record necessary to understand of the matters set forth in the petition); Pan v. Dist. Ct., 120 Nev. 222, 229, 88 P.3d 840, 844 (2004) (explaining that "[w]e routinely . . . deny writ petitions that fail to comply with NRAP 21(a)").

<sup>8</sup>See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.